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JUDICIAL PANEL ON
MULTIDISTRICT
LITIGATION

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

In re AIMCO PROPERTIES, et al.
Fair Labor Standards Act Litigation

MDL Docket No. _____

**BRIEF IN SUPPORT OF PLAINTIFFS' MOTION FOR TRANSFER FOR
COORDINATED PRETRIAL PROCEEDINGS PURSUANT TO 28 U.S.C. § 1407**

I. INTRODUCTION

Apartment Investment Management Company, Inc. ("AIMCO") is the nation's largest owner and manager of apartment communities in the United States, owning or managing over 1000 apartment communities in the United States.¹ See *Bone* Sept. 21, 2007 Second Amended

¹ The actions which Plaintiffs seek consolidated for pre-trial purposes are: *Bone et al. v. Apartment Investment and Management Company et al.*, No. 2:07-cv-01311 (N.D. Ala. filed July 16, 2007) ("*Bone*"); *Boland et al. v. Apartment Investment and Management Company et al.*, No. 2:07-cv-01370 (D. Ariz. filed July 16, 2007) ("*Boland*"); *Campbell et al. v. Apartment Investment and Management Company et al.*, No. 3:07-cv-03640 (N.D. Cal. filed July 16, 2007) ("*Campbell*"); *Dominguez et al. v. Apartment Investment and Management Company et al.*, No. 3:05-cv-04824 (N.D. Cal. filed Nov. 23, 2005) ("*Dominguez*"); *Dominguez et al. v. AIMCO Properties, L.P. et al.*, No. 3:07-cv-03245 (N.D. Cal. filed June 20, 2007) ("*Dominguez II*"); *Hill et al. v. Apartment Investment and Management Company et al.*, No. 07-cv-01492 (D. Colo. filed July 16, 2007) ("*Hill*"); *Chase et al. v. AIMCO Properties, L.P.*, No. 1:03-cv-01683 (D.D.C. filed Aug. 3, 2003) ("*Chase*"); *Angulo et al. v. Apartment Investment and*

Compl. at ¶12; *Boland* Sept. 21, 2007 First Amended Compl. at ¶12; *Campbell* July 16, 2007 Compl. at ¶13; *Dominguez* Sept. 26, 2005 Compl. at ¶7; *Dominguez II* July 16, 2007 First Amended Compl. at ¶13; *Hill* Oct. 3, 2007 First Amended Compl. at ¶12; *Chase* Oct. 17, 2007 Second Amended Compl. at ¶13; *Angulo* Sept. 21, 2007 Second Amended Compl. at ¶12; *Thomas*, Sept. 24, 2007 First Amended Compl. at ¶12; *Bishop* Sept. 21, 2007 Corr. First Amended Compl. at ¶12; *Common* Sept. 21, 2007 Second Amended Compl. at ¶12; *Randolph* Sept. 24, 2007 Second Amended Compl. at ¶12; *Aceituno* Oct. 1, 2007 First Amended Compl. at ¶12; *Cruz* First Amended Compl. at ¶14; *Barton* May 22, 2006 First Amended Compl. at ¶8; *Birchett* Sept. 21, 2007 Second Amended Compl. at ¶12; *Conner* Sept. 21 2007 First Amended

Management Company et al., No. 3:07-cv-643-J-16JRK (M.D. Fla. filed July 16, 2007) ("*Angulo*"); *Thomas et al. v. Apartment Investment and Management Company et al.*, No. 1:07-cv-1638 (N.D. Ga. filed July 16, 2007) ("*Thomas*"); *Bishop et al. v. Vensons et al.*, No. 1:07-cv-03952 (N.D. Ill. filed July 13, 2007) ("*Bishop*"); *Common et al. v. Apartment Investment and Management Company et al.*, No. 1:07-cv-0921 (S.D. Ind. filed July 16, 2007) ("*Common*"); *Randolph et al v. Apartment Investment and Management Company et al.*, No. 3:07CV-371-H (W.D. Ky. filed July 16, 2007) ("*Randolph*"); *Aceituno et al. v. Apartment Investment and Management Company et al.*, No. 8:07-cv-01869 (D. Md. filed July 16, 2007) ("*Aceituno*"); *Cruz et al. v. AIMCO Properties, LP et al.*, No. 8:07-cv-01394 (D. Md. filed May 16, 2007) ("*Cruz*"); *Barton et al. v. Apartment Investment and Management Company et al.*, No. 8:06-cv-00192 (D. Md. filed Jan. 23, 2006) ("*Barton*"); *Birchett et al. v. Apartment Investment and Management Company et al.*, No. 2:07-cv-12939 (E.D. Mich. filed July 16, 2007) ("*Birchett*"); *Conner et al. v. Apartment Investment and Management Company LP et al.*, No. 4:07-cv-00502 (W.D. Mo. filed July 16, 2007) ("*Conner*"); *Hulse et al. v. Apartment Investment and Management Company et al.*, No. 3:07-cv-03256 (D.N.J. filed July 16, 2007) ("*Hulse*"); *Galloway v. Alvarez et al.*, No. 1:07-cv-06435 (S.D.N.Y. filed July 16, 2007) ("*Galloway*"); *Crawford et al. v. Apartment Investment and Management Company et al.*, No. 3:07-cv-274 (W.D.N.C. filed July 16, 2007) ("*Crawford*"); *Davis et al. v. Apartment Investment Management Company et al.*, No. 1:07-cv-542 (S.D. Ohio filed July 16, 2007) ("*Davis*"); *Mitchell et al. v. Apartment Investment Management Company et al.*, No. 2:07-cv-02915 (E.D. Pa. filed July 16, 2007) ("*Mitchell*"); *Cordle et al. v. Apartment Investment Management Company et al.*, No. 7:07-cv-02175 (D.S.C. filed July 16, 2007) ("*Cordle*"); *Burns et al. v. Apartment Investment and Management Company et al.*, No. 3:07-cv-00746 (M.D. Tenn. filed July 16, 2007) ("*Burns*"); *Bell v. Apartment Investment and Management Company*, No. 2:07-cv-00291 (E.D. Tex. filed July 16, 2007) ("*Bell*"); *Dunbar et al. v. Apartment Investments and Management Company et al.*, No. 3:07-cv-00034 (W.D. Va. Filed July 16, 2007) ("*Dunbar*").

Compl. at ¶12; *Hulse* Sept. 28, 2007 First Amended Compl. at ¶12; *Galloway* Sept. 24, 2007 First Amended Compl. at ¶12; *Crawford* Oct. 1, 2007 First Amended Compl. at ¶12; *Davis* Sept. 27, 2007 First Amended Compl. at ¶12; *Mitchell* Oct. 15, 2007 First Amended Compl. at ¶12; *Cordle* Sept. 17, 2007 First Amended Compl. at ¶12; *Burns* Sept. 21, 2007 Second Amended Compl. at ¶12; *Bell* Sept. 21, 2007 First Amended Compl. at ¶12; *Dunbar* Oct. 1, 2007 First Amended Compl. at ¶12, attached collectively as Ex. 1. Defendants NHP Management Co., AIMCO / Bethesda Holdings, Inc. and AIMCO Properties, LP are wholly-owned subsidiaries of AIMCO. See Defendants Corporate Disclosure, attached as Ex. 2.

Plaintiffs in the 26 actions at issue here are hourly-paid maintenance or service technicians paid by AIMCO to maintain the condition of its properties. See *Bone* Sept. 21, 2007 Second Amended Compl. at ¶18; *Boland* Sept. 21, 2007 First Amended Compl. at ¶18; *Campbell* July 16, 2007 Compl. at ¶17; *Dominguez* Sept. 26, 2005 Compl. at ¶4; *Dominguez II* July 16, 2007 First Amended Compl. at ¶17; *Hill* Oct. 3, 2007 First Amended Compl. at ¶18; *Chase* Oct. 17, 2007 Second Amended Compl. at ¶21; *Angulo* Sept. 21, 2007 Second Amended Compl. at ¶18; *Thomas* Sept. 24, 2007 First Amended Compl. at ¶18; *Bishop* Sept. 21, 2007 Corr. First Amended Compl. at ¶18; *Common* Sept. 21, 2007 Second Amended Compl. at ¶18; *Randolph* Sept. 24, 2007 Second Amended Compl. at ¶18; *Aceituno* Oct. 1, 2007 First Amended Compl. at ¶18; *Cruz* First Amended Compl. at ¶18; *Barton* May 22, 2006 First Amended Compl. at ¶12; *Birchett* Sept. 21, 2007 Second Amended Compl. at ¶18; *Conner* Sept. 21 2007 First Amended Compl. at ¶18; *Hulse* Sept. 28, 2007 First Amended Compl. at ¶18; *Galloway* Sept. 24, 2007 First Amended Compl. at ¶18; *Crawford* Oct. 1, 2007 First Amended Compl. at ¶18; *Davis* Sept. 27, 2007 First Amended Compl. at ¶18; *Mitchell* Oct. 15, 2007 First Amended Compl. at ¶18; *Cordle* Sept. 17, 2007 First Amended Compl. at ¶18; *Burns* Sept. 21, 2007 Second Amended

Compl. at ¶18; *Bell* Sept. 21, 2007 First Amended Compl. at ¶18; *Dunbar* Oct. 1, 2007 First Amended Compl. at ¶18, Ex. 1. All Plaintiffs were required by AIMCO to remain “on call” after normal business hours to respond to and address tenant requests for services received during those hours. *Id.* at ¶¶ 16, 19, 24, 26, 34, Ex. 1. Pursuant to 28 U.S.C. § 1407, Plaintiffs in all these actions seek the consolidated or coordinated pretrial treatment of 26 related actions.²

These cases satisfy the requirements for transfer and coordination since they “involv[e] one or more common questions of fact,” and transfer would further “the convenience of the parties and witnesses” and “promote the just and efficient conduct of [the] actions by” ensuring centralized oversight of pretrial fact development. *See* 28 U.S.C. § 1407(a). Plaintiffs in each suit make nearly identical claims for unpaid overtime under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201, *et seq.*, and have filed substantively identical complaints against Defendants. *See* Complaints, Ex. 1. All Plaintiffs in all actions allege that they were not paid for all time worked while they were “on call” at their apartment communities. AIMCO denies Plaintiffs are entitled to overtime compensation for the activities at issue and asserts identical defenses in each action. *See* *Bone* Answer at Affirmative Defense ¶¶ 1-5; *Boland* Answer at Affirmative Defense ¶¶ 1-5; *Campbell* Answer at Affirmative Defense ¶¶ 1-5; *Dominguez* Answer at Affirmative Defense ¶¶ 1-5; *Chase* Answer at Affirmative Defense ¶¶ 1-5; *Angulo* Answer at Affirmative Defense ¶¶ 1-5; *Thomas* Answer at Affirmative Defense ¶¶ 1-5; *Bishop* Answer at Affirmative Defense ¶¶ 1-5; *Common* Answer at Affirmative Defense ¶¶ 1-5; *Randolph* Answer at Affirmative Defense ¶¶ 1-5; *Aceituno* Answer at Affirmative Defense ¶¶ 1-5; *Barton* Answer at Affirmative Defense ¶¶ 1-5; *Birchett* Answer at Affirmative Defense ¶¶ 1-5;

² See *supra*, note 1.

Conner Answer at Affirmative Defense ¶¶ 1-5 ; *Hulse* Answer at Affirmative Defense ¶¶ 1-5; *Galloway* Answer at Affirmative Defense ¶¶ 1-5; *Crawford* Answer at Affirmative Defense ¶¶ 1-5; *Davis* Answer at Affirmative Defense ¶¶ 1-5; *Mitchell* Answer at Affirmative Defense ¶¶ 1-5; *Cordle* Answer at Affirmative Defense ¶¶ 1-5; *Burns* Answer at Affirmative Defense ¶¶ 1-5; *Bell* Answer at Affirmative Defense ¶¶ 1-5; *Dunbar* Answer at Affirmative Defense ¶¶ 1-5, attached collectively as Ex. 3. All Plaintiffs in the cases in which discovery has commenced have been served with identical discovery, and Plaintiffs expect to serve Defendants with essentially identical discovery in each action as well. See Requests for Admission, Requests for Documents, and Interrogatories, attached collectively as Ex. 4 (including a sample of the identical discovery requests from each action). Therefore, transfer under section 1407 is necessary to avoid duplication of discovery, eliminate potential conflicting pretrial rulings by different courts, and conserve the resources of the parties and the judiciary.

All of the cases for which transfer and consolidation are sought arise from a single action, *Chase v. AIMCO*, Civ. No. 1:03-CV-01683(JR) (D.D.C. Aug. 7, 2003) (“*Chase*”), currently pending before Judge Robertson in the United States District Court for the District of Columbia. In *Chase*, Judge Robertson granted conditional certification of an opt-in class of AIMCO maintenance technicians. See *Chase v. AIMCO*, Civ. No. 1:03-CV-01683(JR), slip. op. (D. D.C. June 23, 2005), dkt. no. 88. Following notice of this action to potential class members, approximately 1000 maintenance technicians elected to file consents to join the *Chase* action. Judge Robertson subsequently determined a single trial of all of the Plaintiffs’ claims was inappropriate, decertified the class, and dismissed those opt-in Plaintiffs whose claims did not have a nexus with Washington, D.C. *Chase v. AIMCO*, Civ. No. 1:03-CV-01683(JR), slip. op. (D.D.C. Apr. 25, 2007), dkt. nos. 217, 222 Plaintiffs then filed lawsuits in Alabama, Arizona,

California, District of Columbia, Colorado, Florida, Georgia, Illinois, Indiana, Kentucky, Maryland, Michigan, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, and Virginia on behalf of the opt-in class members residing in each of these states.

Because Judge Robertson is familiar with both the facts and the law at issue in these actions, and because *Chase* case is by far the most advanced of the actions at issue, Plaintiffs respectfully propose that the Panel transfer these 26 lawsuits to District Judge Robertson for coordinated pretrial treatment.

II. LITIGATION BACKGROUND

The history of these actions is lengthy. On August 3, 2003, certain maintenance technicians employed by Defendants filed a collective and class action suit in the United States District Court for the District of Columbia pursuant to 29 U.S.C. § 216(b) and Fed. R. Civ. P. 23. *See* Compl., *Chase v. AIMCO*, Civ. No. 1:03-CV-01683(JR) (D.D.C. Aug. 7, 2003), dkt. no. 1. The plaintiffs in that action made the same basic allegations as the Plaintiffs here. Plaintiffs sought certification of a nationwide collective action pursuant to § 216(b) of the Fair Labor Standards Act, and the certification of Maryland and California state law claims pursuant to Fed. R. Civ. P. 23. Judge James Robertson conditionally certified as a collective action plaintiffs' claims under the Fair Labor Standards Act, but declined to exercise supplemental jurisdiction over the pendant state law claims of the proposed Rule 23 subclasses.³ *Chase v. AIMCO*, Civ.

³ Judge Robertson's decision not to exercise supplemental jurisdiction over the state law claims was based on *Lindsay v. Gov't Employees Ins. Co.*, 355 F. Supp. 2d 119 (D.D.C. 2004) which was subsequently reversed by the United States Court Appeals for the District of Columbia in *Lindsay v. Gov't Employees Ins. Co.*, 448 F.3d 416 (D.C. Cir. 2006). As a result of Judge Robertson's decision, the California and Maryland plaintiffs filed in action their respective state courts alleging violations of state law and seeking class treatment of their claims. Defendant removed these actions to federal court. *See Dominguez et al. v. Apartment Investment and Management Company et al.*, No. 3:05-cv-04824 (N.D. Cal. filed Nov. 23, 2005); *Barton et al. v.*

No. 1:03-CV-01683(JR), slip. op. (D. D.C. June 23, 2005), dkt. no. 88. Following certification pursuant to Rule 216(b), notice of the pendency of the collective action was sent to AIMCO's current and former maintenance technician employees. More than one thousand employees filed consents to join the collective action.

The parties then engaged in discovery limited to preparation for Defendants' motion for decertification of the conditionally certified opt-in class. On March 28, 2007, Judge Robertson granted Defendants' motion to decertify the collective action, finding the facts incompatible with a nationwide collective action. *Chase v. AIMCO*, Civ. No. 1:03-CV-01683(JR), slip. op. (D.D.C. Apr. 25, 2007), dkt. no. 217. The court subsequently dismissed without prejudice the claims of the individuals who filed consents to join *Chase v. AIMCO*, but whose claims did not have a nexus with the properties managed by AIMCO in the District of Columbia.⁴ *Chase v. AIMCO*, Civ. No. 1:03-CV-01683(JR), slip. op. (D. D.C. Apr. 25, 2007), dkt. no. 222. That same day, the Court ordered mediation of the D.C. named plaintiffs and the D.C. opt-ins' claims. *Chase v. AIMCO*, Civ. No. 1:03-CV-01683(JR), slip. op. (D. D.C. Apr. 25, 2007), dkt. no. 223. The parties participated in a mediation session in June 2007 and also engaged in discussions concerning the possibility of a more global resolution that would include the opt-ins' claims.

Apartment Investment and Management Company et al., No. 8:06-cv-00192 (D. Md. filed Jan. 23, 2006). These actions were stayed pending resolution of the motion for decertification in *Chase*.

⁴ Judge Robertson also transferred the claims of the *Chase* named plaintiffs with a nexus to Maryland and California to their respective jurisdictions, resulting in two new actions that allege violations of the FLSA on behalf of two individuals in the Northern District of California and three individuals in the District of Maryland. See *Dominguez et al. v. AIMCO Properties, L.P. et al.*, No. 3:07-cv-03245 (N.D. Cal. filed June 20, 2007); *Chase et al. v. AIMCO Properties, LP et al.*, No. 8:07-cv-01394 (D. Md. filed May 16, 2007). Shortly thereafter, the opt-in Plaintiffs in *Chase* filed actions in California and Maryland, respectively. See *Campbell et al. v. Apartment Investment and Management Company et al.*, No. 3:07-cv-03640 (N.D. Cal. filed July 16, 2007); *Aceituno et al. v. Apartment Investment and Management Company et al.*, No. 8:07-cv-01869 (D. Md. filed July 16, 2007).

The mediation and related discussions were unsuccessful and, as a result, Plaintiffs filed 21 actions on behalf of the non-Washington, D.C. opt-ins whose claims were denied without prejudice in *Chase v. AIMCO* but who have a nexus to properties managed by AIMCO in each respective jurisdiction. *See supra*, note 1.

III. APPLICATION OF THE CONTROLLING LEGAL STANDARD FAVORS THE TRANSFER OF THESE ACTIONS FOR COORDINATED OR CONSOLIDATED PRETRIAL PROCEEDINGS UNDER 28 U.S.C. § 1407

Pursuant to 28 U.S.C. § 1407, civil actions in different districts that involve common questions of fact may be transferred to a single court for coordinated or consolidated pretrial proceedings if such a transfer “will be for the convenience of parties and witnesses and will promote the just and efficient conduct of such actions.” 28 U.S.C. § 1407(a). The goal of section 1407 is “the avoidance of conflicting and duplicative pretrial demands on parties and witnesses in related cases.” *In re Regents of the Univ. of Cal.*, 964 F.2d 1128, 1131 (Fed. Cir. 1992).

Consolidation of these 26 actions, which are pending in 22 different jurisdictions, fulfills these requirements. All 26 actions assert essentially the same claims and involve essentially the same defenses. Thus, litigating Plaintiffs’ claims will require resolution of parallel issues, such as: (i) whether AIMCO, despite its written prohibitions for off the clock work, effectively required its maintenance technicians to work off the clock responding to service calls from tenants; (ii) whether AIMCO’s recordkeeping of the time maintenance technicians worked while on call was sufficient to satisfy the requirements of the FLSA; (iii) the nature of the restrictions AIMCO placed on Plaintiffs while they were on call; (iv) whether those restrictions are sufficient to justify compensation for all time spent on call; and (v) whether AIMCO’s failure to pay Plaintiffs for all on call time was a willful violation of the FLSA.

On these and other matters, duplicative discovery and motion practice will occur. Indeed, identical discovery already has been served in every action in which discovery has been

commenced. *See Requests for Admission, Requests for Documents, and Interrogatories, Ex. 4.* Absent coordination, any dispute arising from this identical discovery will be litigated 26 separate times, with the possibility of varying outcomes and inconsistent discovery requirements. Because consolidated pretrial treatment under section 1407 would assist the parties in avoiding such repetition and conflicting decisions concerning these issues, consolidation would serve the convenience of the parties and witnesses and promote the just and efficient conduct of litigation.

A. These Actions Involve Several Common Questions Of Fact

The threshold issue under section 1407 is the existence of one or more common questions of fact. *See In re Regents of Univ. of Cal.*, 964 F.2d at 1135 (coordination and transfer pursuant to section 1407 requires the presence of sufficient common questions of fact to promote the just and efficient conduct of multiple actions by eliminating the potential for conflicting pretrial rulings by coordinate courts). In situations where individual lawsuits share a "common factual core" transfer is appropriate. *See In re Stirling Home Corp. Secs. Litig.*, 442 F. Supp. 547, 549 (J.P.M.L. 1977).

The factual assertions in each of the instant actions are identical. Plaintiffs allege that they are or were employed by AIMCO as maintenance technicians; that they are or were required to work "on call" after normal business hours; and that AIMCO, pursuant to an unwritten but nevertheless enforced corporate policy, did not and continues not to pay them for all time worked while on call. In addition, some Plaintiffs allege that the restrictions placed on them while on call were sufficiently limiting that they should be paid for all time spent on call waiting for calls for service from tenants. *See Complaints, Ex. 1.*

These common allegations require the resolution of similar factual issues in each action. For example, each of these actions will require inquiry as to (1) the nature of AIMCO's instructions regarding off-the-clock work while on call; (2) whether AIMCO permitted its

employees to be paid overtime where, as was the case with virtually all emergency work, a request for overtime was not received in advance; the sufficiency of AIMCO's recordkeeping; (3) the level of restriction placed on the activities of on call employees; and (4) whether AIMCO's violation of the FLSA was in good faith or willful. The defenses in each action also are identical and therefore will require adjudication of common questions of fact. Transfer under section 1407 thus is appropriate because the core factual allegations of all 26 lawsuits, and the defenses asserted in each, are virtually identical.

B. Consolidation Of These Actions Will Serve The Convenience Of The Parties And Witnesses And Will Promote The Just And Efficient Conduct Of These Actions.

Consolidation also is appropriate because it would serve the convenience of the parties and witnesses, and promote the just and efficient conduct of these actions. Consolidated pretrial discovery would limit the duplication of discovery on common issues, avoid conflicting pretrial rulings, and resolve potential conflicting rulings on certification of the state law claims pending in four jurisdictions.⁵ *See In re Amerada Hess Corp. Antitrust Litig.*, 355 F. Supp. 1404, 1405 (J.P.M.L. 1975) (coordinated treatment is appropriate to avoid duplication of discovery); *In re Suess Patent Litig.*, 331 F. Supp. 549, 550 (J.P.M.L. 1971) (coordinated treatment is appropriate to avoid duplication of discovery and conflicting pretrial rulings); *In re Griseofulvin Antitrust Litig.*, 395 F. Supp. 1402, 1403 (J.P.M.L. 1975) (same).

Here, the discovery served in each action has thus far been identical, therefore, as a practical matter only consolidation for pre-trial purposes will avoid both conflicting discovery rulings and the burden of 22 separate judges deciding identical discovery disputes. Coordination

⁵ In addition to the state law class action claims pending in the District of Maryland and the Northern District of California, *see supra* at n. 3, the complaints filed in the Northern District of Illinois and the Southern District of New York by the opt-ins dismissed without prejudice in the *Chase v. AIMCO* litigation include state law class action allegations.

would also reduce the burden on Plaintiffs by allowing them to schedule the pretrial workload in an efficient manner, perhaps moving sequentially through the various states in which actions are filed, or in some other logical, staged manner. *See In re Bristol Bay, Alas., Salmon Fishery Antitrust Litig.*, 424 F. Supp. 504, 506-07 (J.P.M.L. 1977).

1. Consolidation will prevent duplicative discovery and conflicting rulings

Because Plaintiffs' allegations are identical in each jurisdiction, repetitive discovery already has begun and will continue. The parties have sought⁶ and will seek the same types of information for each common factual issue. As a result, each party either has served or will shortly serve redundant discovery requests, and Plaintiffs in each action will seek redundant depositions from the same corporate representatives. Moreover, the parties in each action are likely to request many of the same documents. Consolidating these cases before a single district judge would avoid such unnecessary and burdensome repetition.

Coordinated or consolidated pretrial proceedings would also help to avoid conflicting pretrial rulings. This Panel has previously recognized that avoiding duplicative and potentially inconsistent pretrial rulings promotes the just and efficient conduct of related proceedings and justifies transfer under section 1407. This includes potentially inconsistent rulings on discovery motions, *see In re Ironworkers Union Employment Practices Litig.*, 424 F. Supp. 1072, 1074 (J.P.M.L. 1976), and dispositive motions, *see In re Temporomandibular Joint (TMJ) Implants Prods. Liability Litig.*, 844 F. Supp. 1553, 1554 (J.P.M.L. 1994). Because the parties just recently begun to conduct, and will continue to conduct, identical discovery in each action, it is a certainty that Courts in each jurisdiction will encounter and be required to resolve identical discovery disputes.

⁶ See Ex. 4.

Similarly, these actions will likely involve duplicative motions for summary judgment. For instance, the parties disagree on whether waiting time is compensable as a matter of law under the circumstances present here. The parties also are likely to disagree over whether AIMCO's violation of the law was willful, and whether AIMCO is entitled to a reduction from the FLSA's presumptive double damages provisions. Litigating these pretrial motions in a consolidated manner before a single judge, rather than repeatedly subjecting these issues to potentially conflicting determinations by multiple courts, would serve the just and efficient conduct of these actions. Not only would it save the parties from the time spent on duplicative motions, but it would also avoid the multiple appeals that would likely result from conflicting determinations on identical factual allegations.

IV. THIS PANEL SHOULD TRANSFER THE ACTIONS TO THE DISTRICT OF COLUMBIA

Given the similar factual issues that predominate in these actions, and the likelihood of repetitive discovery and pretrial motions, coordination under section 1407 is appropriate. The question thus becomes where the Panel should transfer these suits. Numerous factors are relevant in selecting a transferee forum, including the: (1) district of the earliest filed action, *In re Regents of Univ. of Cal.*, 964 F.2d at 1136; (2) status of the actions in the various transferor forums, *In re Four Seasons Secs. Laws Litig.*, 362 F. Supp. 574, 575-76 (J.P.M.L. 1973); (3) the number of actions pending before the potential transferee forums, *In re Republic Nat'l-Realty Equities Sec. Litig.*, 382 F. Supp. 1403, 1406 (J.RKL. 1974); and (4) familiarity of judges in the potential transferee forum with the issues in the consolidated actions, *In re Plywood Antitrust Litig.*, 376 F. Supp. 1405, 1407 (J.P.M.L. 1974). Here, because there is only one action in 20 of the jurisdictions, and the multiple actions pending in the Northern District of California and the District of Maryland have been consolidated before a single judge in each court, factor (3) is

irrelevant. Factors (1), (2), & (4), however, all strongly favor transfer and consolidation of the actions for pre-trial purposes to The Hon. Judge Robertson of the District Court for the District of Columbia.

A. Earliest Filed Action And Status Of Litigation

The *Chase* case before Judge Robertson is by far the most advanced of the instant actions. Judge Robertson has presided over the action *Chase et al v. AIMCO*, which gave rise to the 26 actions that Plaintiffs now seek consolidated, for over four years. Discovery is set to close in *Chase* in early 2008, with dispositive motion practice to begin March 1, 2008. A trial will follow shortly thereafter – the first of the related actions at issue here to be tried. In contrast, none of the 23 newly-filed actions has progressed beyond the initial pleadings stage. As noted above, identical discovery in each action has been served, but neither party has answered any discovery.

Consolidation of these actions with the *Chase* case thus presents an opportunity to efficiently manage the other 25 actions at issue. By the conclusion of this discovery process and trial in *Chase*, both the Court and the parties should have a complete understanding of the appropriate approach for the completion of discovery in the other 25 actions related to *Chase*. Transfer of these actions for pre-trial purposes to Judge Robertson will thus permit the most efficient course for the completion of discovery and pre-trial motion practice of those actions.

B. Familiarity Of Judges In The Transferee Forums With The Issues In Consolidated Cases

Judge Robertson is far more familiar with the facts underlying the 26 actions than any other Court. During the pendency of *Chase*, Judge Robertson has become extensively familiar with the both the facts of the action, which largely overlap with those of the 25 other actions filed this year, and the underlying legal issues, set forth above, that constitute the core of the

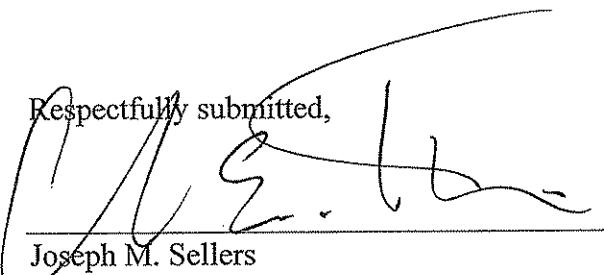
parties' disputes in each of the actions. Judge Robertson has resolved several discovery motions, ruled on Plaintiffs' motion for collective action treatment pursuant to 29 U.S.C. § 216(b), and ruled on Defendants' subsequent motion for decertification. Resolution of each of these motions required developing familiarity with the facts and the law relevant to all of the 26 actions Plaintiffs propose for consolidation. The District of Columbia thus represents the ideal transferee forum for the instant litigation.

V. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court transfer each of the actions listed in the attached Schedule of Actions to the Hon. Judge James Robertson the United States District Court for the District of Columbia for consolidation and coordination of pre-trial proceedings.

Date: November 15, 2007

Respectfully submitted,


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PROOF OF SERVICE

I hereby certify that on this day, November 15, 2007, a copy of the foregoing Plaintiffs' Motion for Transfer for Coordinated Pretrial Proceedings Pursuant to 28 U.S.C. § 1407 was served by first-class mail, postage prepaid upon the following:

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United States District Court for the Northern District of Alabama
Hugo L. Black U. S. Courthouse
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Birmingham, AL 35203

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United States District Court for the District of Arizona - Phoenix Division
Sandra Day O'Connor U.S. Courthouse, Suite 130
401 West Washington Street, SPC 1
Phoenix, AZ 85003-2118

Clerk of the Court

United States District Court for the Northern District of California
235 Pine Street, 19th Floor
San Francisco, CA, 94120-7341

Clerk of the Court

United States District Court for the District of Colorado
Alfred A. Arraj United States Courthouse, Room A105
901 19th Street
Denver, Colorado 80294-3589

Clerk of the Court

United States District Court for the Middle District of Florida – Jacksonville Division
United States Courthouse
300 North Hogan Street
Jacksonville, FL 32202

Clerk of the Court

United States District Court for the Northern District of Georgia – Atlanta Division
Richard B. Russell Federal Building and Courthouse
75 Spring Street SW, Room 2211
Atlanta, GA 30303-3361

Clerk of the Court

United States District Court for the Northern District of Illinois
Everett McKinley Dirksen Building
219 South Dearborn Street

Chicago, Illinois 60604

Clerk of the Court

United States District Court for the Southern District of Indiana – Indianapolis Division
Birch Bayh Federal Building
46 East Ohio Street, Room 105
Indianapolis, IN 46204

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United States District Court for the District of Columbia
333 Constitution Avenue, N.W.
Washington, D.C. 20001

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United States District Court for the Western District of Kentucky – Louisville Division
Gene Snyder United States Courthouse
601 W. Broadway, Rm 106
Louisville, KY 40202

Clerk of the Court

United States District Court for the District of Maryland – Greenbelt Division
6500 Cherrywood Lane
Greenbelt, MD 20770

Clerk of the Court

United States District Court for the Eastern District of Michigan– Detroit Division
Theodore Levin U.S. Courthouse
231 W. Lafayette Blvd.
Detroit, Michigan 48226

Clerk of the Court

United States District Court for the Western District of Missouri – Kansas City Division
400 E 9th St.
Kansas City, MO 64106

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United States District Court for the District of New Jersey – Trenton Division
Clarkson S. Fisher Building & U.S. Courthouse
402 East State Street, Room 2020
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United States District Court for the Southern District of New York
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United States District Court for the Eastern District of Pennsylvania – Philadelphia Division
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United States District Court for the Middle District of Tennessee – Nashville Division
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United States District Court for the Eastern District of Texas – Marshall Division
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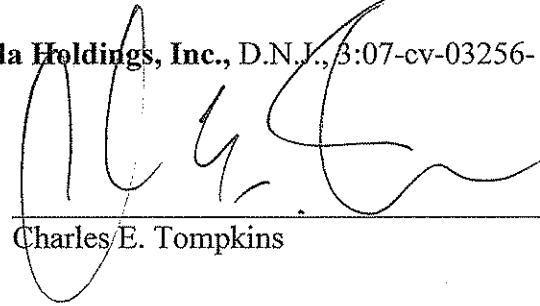
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